

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13<sup>th</sup> DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL APPEAL NO.5/2024

C/W.

CRIMINAL APPEAL NO.455/2024

**IN CRIMINAL APPEAL NO.5/2024:**

BETWEEN:

SRI. N.S. VISHWANATH  
S/O. LATE N. SIDDAIAH  
AGED ABOUT 75 YEARS  
SENIOR CITIZEN  
R/AT NO.92 (EWS)  
1<sup>ST</sup> FLOOR, 3<sup>RD</sup> CROSS  
2<sup>ND</sup> STAGE, KHB COLONY  
AGRAHARA DASARAHALLI  
BANGALORE-560 079  
MOB: 9141729174.

... APPELLANT

(BY SRI. K. MANOHARA CHARU, ADVOCATE)

AND:

SRI. SATHYAVIJAYA R.,  
S/O. LATE REVANNA  
AGED ABOUT 49 YEARS  
R/AT NO.117/2,  
KANASU NILAYA, 7<sup>TH</sup> CROSS,  
PRIYADARSHINI LAYOUT  
NAGARABHAVI ROAD,

MOODALAPALYA  
BANGALORE-560 072  
MOB: 9448479399.

... RESPONDENT

(BY SRI. SARAVANA S., ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(4)  
OF CR.PC PRAYING TO SET ASIDE THE JUDGEMENT AND ORDER  
DATED 08.12.2023 IN C.C.NO.6061/2022 PASSED BY THE XII  
ASCJ AND ACMM (SCCH-08) COURT AT BANGALORE AND ETC.

**IN CRIMINAL APPEAL NO.455/2024:**

BETWEEN:

N.S.VISHWANATH  
S/O LATE N. SIDDAIAH,  
AGED ABOUT 75 YEARS  
NO.92(EWS) 1<sup>ST</sup> FLOOR  
3<sup>RD</sup> CROSS, 2<sup>ND</sup> STAGE,  
KHB COLONY, A.D.HALLY  
BENGALURU 560079  
MOB:9141729174.

... APPELLANT

(BY SRI. K. MANOHARA CHARI, ADVOCATE)

AND:

M. SURESH S/O MAYANNA  
AGED ABOUT 47 YEARS  
NO.379, 3<sup>RD</sup> MAIN ROAD  
VIJAYANANDANAGAR  
NANDHINI LAYOUT  
BENGALURU-560 096  
MOB: 9448479399.

... RESPONDENT

(BY SRI. SARAVANA S., ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(4) OF CR.PC TO ALLOW THIS APPEAL, BY SET ASIDE THE JUDGMENT ORDER PASSED BY THE LXVI ADDL. CITY CIVIL AND SESSIONS JUDGE (CCH-67) AT BENGALURU, DATED 22.01.2024 IN CRL.A.NO.1350/2022 AND ETC.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 03.06.2025 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

### **CAV JUDGMENT**

The Crl.A.No.5/2024 is filed challenging the judgment and order of acquittal dated 08.12.2023 in C.C.No.6061/2022 passed by the XII ASCJ and ACMM Court, Bengaluru and Crl.A.No.455/2024 is filed challenging the judgment and order of acquittal dated 22.01.2024 passed in Crl.A.No.1350/2022 by the LXVI Additional City Civil and Sessions Judge, Bengaluru reversing the judgment dated 30.09.2022 passed in C.C.No.10763/2021 by the XII Additional and ACMM, Bengaluru.

2. The appellant in both the appeals is common and the respondents in both the appeals are different. Heard the learned

counsel appearing for the appellant in both the cases and the learned counsel appearing for the respondents.

3. The factual aspects of the case of CrI.A.No.5/2024 which is arising out of C.C.No.6061/2022 is that the complainant and the accused are known to each other. The accused had sought hand loan of Rs.9/- lakh from him to clear hand loan borrowed for his son's marriage and also to clear old debts and hence, the said amount was paid to the accused by way of cash on 21.12.2021 and the accused had agreed to repay the said amount within two months with 18% interest. The accused issued a post dated Cheque for Rs.9/- lakh and when the said Cheque was presented, the same was dishonoured with an endorsement 'funds insufficient' and hence, the complainant issued a legal notice and the same was served and inspite of service of notice, the accused neither paid the Cheque amount nor replied to the notice. Hence, the complainant filed a complaint under Section 138 of N.I. Act and cognizance was taken and accused was secured and he did not plead guilty and claims for trial.

4. The complainant in order to prove his case, examined himself as PW1 and got marked the documents at Ex.P1 to P12. On the other hand, accused examined himself as DW1 and got marked the document at Ex.D1. The Trial Court having considered both oral and documentary evidence placed on record, acquitted the accused in coming to the conclusion that the complainant failed to prove his financial capacity to lend the money and also comes to the conclusion that Ex.P6 in the present case also produced in C.C.No.10763/2021. Apart from that the documents at Ex.P7 and P8 are produced for having pledged the gold ornaments and paid the amount. The complainant also relied upon the document at Ex.P9 which is the statement in the loan ledger for jewel loan showing transfer of the above said amount to the complainant. The Trial Court also given the reasoning that the person who pledged the gold and paying the interest, will not lend the money to the accused. The Trial Court also comes to the conclusion that PW1 himself admitted that Ex.P6 to P9 are produced in another case. The Trial Court having considered the payment of Rs.5,50,000/- to another accused in C.C.No.10763/2021 comes to the conclusion

that there would be a shortage of amount of Rs.4,62,000/- and held that then, how he managed the said amount in order to pay amount to the accused is not explained. Hence, doubted the case of the complainant regarding the capacity to lend the money. Accordingly, acquitted the accused. Hence, the present appeal is filed before this Court questioning the order of acquittal.

5. The learned counsel for the appellant in his arguments would vehemently contend that the Trial Court fails to consider the cogent evidence placed on record. The Trial Court failed to consider the admission of DW1 and the Trial Court is not taken any rebuttal evidence given by the appellant to rebut the legal presumption available under Section 139 of N.I. Act. The counsel would vehemently contend that once the issuance of Cheque is admitted i.e., Ex.P1 and also other documents, the burden lies on the accused to rebut the same and in the absence of rebutting the same, the Trial Court ought not to have comes to a conclusion that the complainant was not having any capacity to lend the money. The counsel also would

vehemently contend that when the documents at Ex.P6 to P9 are placed on record for having the money to lend the money, the Trial Court ought not to have disbelieved the case of the complainant. Hence, it requires interference of this Court. The counsel also would vehemently contend that DW1 in his cross-examination categorically admitted that he studied up to X standard and also admits in the cross-examination that for what reason he gave Ex.P1 and P5 but he claims that the same was given towards security for the chit amount but no documents are placed in this regard to show that the complainant was running a chit business. Accused also admits that he had paid the Cheque and the complainant had obtained his signature on the blank paper, but he has not given any complaint or given any notice to the complainant in this regard. In spite of these answers are elicited from the mouth of PW1, the Trial Court presumed that the complainant was not having any capacity to lend the money.

6. The learned counsel for the respondent in his arguments would vehemently contend that the Trial Court rightly dismissed the complaint since Ex.P6 was used in both the cases

that is the present case and also in another connected matter which is also pending for consideration. The counsel would vehemently contend that it is elicited from the mouth of witness is that the complainant had filed several cases, thus, the Court has to take note of the *modus operandi* of the complainant. The counsel submits that the complainant relies upon pledging of gold ornaments but nothing is placed on record for having lent the money to other persons. The counsel would contend that the Trial Court rightly considered the material on record and doubted the case of the complainant regarding capacity as well as pledging of gold and advancing the loan amount. Hence, it does not require any interference.

7. In CrI.A.No.455/2024, the case of the complainant before the Trial Court that the accused is known to him since five years as he was introduced by one B Lohith who is the common friend of the complainant and the accused. On 07.06.2021, the accused approached the complainant for hand loan of Rs.5,50,000/- for cable business and agreed to repay the same within 3½ months. The amount was paid by way of cash and



accused had agreed to repay the same with 18% interest. On the same day, he had issued a cheque dated 24.09.2021 for Rs.5,50,000/-. The accused had also issued a receipt acknowledging the receipt of the loan amount. When Cheque was presented, the same was dishonoured with an endorsement 'funds insufficient' thus, the complainant issued the legal notice and the same was served on the accused but he did not repay the amount. Hence, the complainant filed the complaint invoking Section 138 of N.I.Act and cognizance was taken and accused was secured and he did not plead guilty and claims for trial.

8. The complainant in order to prove his case, examined himself as PW1 and got marked the documents at Ex.P1 to P11 and on the other hand, accused examined himself as DW1 and got marked the documents at Ex.D1 to D9. The Trial Court having considered both oral and documentary evidence placed on record, convicted the accused and directed to pay a fine of Rs.5,80,000/-. Hence, the accused filed an appeal in Crl.A.No.1350/2022. The First Appellate Court having

reassessed the material on record allowed the appeal and acquitted the accused in coming to the conclusion that the accused probablised his defence that blank Cheque and blank paper was taken and also comes to the conclusion that the complainant has not chosen to examine the witness of Ex.P6 that is Lohith. The First Appellate Court held that in the absence of non-examination of Lohith as a witness, the defence of the accused is probable. The First Appellate Court also relied upon Ex.D3 for having made the payment of Rs.5,500/- as part payment. It is also specific case of the accused that earlier he had borrowed from the complainant the amount in the year 2018. It is also not the case of the complainant that an amount of Rs.5,500/- was paid by the accused towards interest and also there was no any endorsement to that effect for having made the payment. The First Appellate Court held that in the absence of any such endorsement, the Cheque cannot be presented for encashment without recording the part payment and comes to the conclusion that the Trial Court also did not consider the financial capacity of the complainant and the defence of the

accused is probable and the said conclusion is erroneous. Hence, it requires interference of this Court.

9. The main contention of the learned counsel for the appellant that the Trial Court in detail discussed the evidence taking into note of the Cheque and the document of receipt for having acknowledged the receipt of the money. The First Appellate Court failed to consider the fact that the amount was given and the required money was to be adjusted from taking gold loan from Repco Bank and source of income as required by the petitioner at the time of funding was deposed before the Court and hence, evidence is very clear that he has got sufficient means to advance the loan. The order of the First Appellate Court reversing the judgment of the Trial Court is only hypothetical and ought not to have acquitted the accused when there was no any explanation in 313 statement of the accused except stating that he had borrowed the amount in 2018 and repaid the amount of Rs.3,50,000/-. Even when there was an admission that only he had repaid the amount of Rs.3,50,000/- and not entire amount which had availed in 2018, the First

Appellate Court completely missed the evidence available on record and also the admission given by DW1 in his cross-examination. The counsel would vehemently contend that, the accused admits the signature in Ex.P1 and P6 and also he is the B.Sc graduate and also categorically admits that he had availed earlier loan on 29.05.2018 and payment was made by way of NEFT to the tune of Rs.5/- lakh and also admits the account statement which is marked as Ex.P9(a).

10. The counsel fro the appellant would vehemently contend that DW1 also categorically admits for having filed the civil suit against him in O.S.No.527/2022. However, he admits signature of the accused found in the vakalath which was filed in O.S.No.527/2022 which is marked as Ex.P10 and so also he admits other vakalath, certified copies and same is also marked as Ex.P11. The counsel would vehemently contend that accused also admits that the address mentioned in Ex.P5 is correct and if any notice is issued to the said address, the same would be served on him. It is suggested that on 07.06.2021, he went to the house of he complainant and clear the loan on 29.05.2018

and availed the fresh loan of Rs.5,50,000/- and the said suggestion was denied. However, he categorically admits his signature in Ex.P6 and he also admits that he only wrote the address in Ex.P6. But he has not denied that Lohith who is the witness is the son of his maternal uncle and only he says that he is not aware of the same. He also admits signature in Ex.P1. It is suggested that hand writing in Ex.P1 and P6 are one and the same and the said suggestion was denied. However, a suggestion was made that he could able to send the document for hand writing expert and prove the same and he admits that he can do the same.

11. The counsel referring these admissions would vehemently contend that the First Appellate Court fails to appreciate the material on record when the Trial Court in detail discussed the evidence of the complainant and accused and rightly convicted the accused and hence, it requires interference of this Court. The counsel also would vehemently contend that no reply was given by the accused inspite of service of notice but only by mistake, the receipt was marked in both the cases and

the same is magnified by both the Courts and *bona fide* mistake in marking the said receipt cannot be a ground to acquit the accused unless the accused rebut the case of the complainant by placing on record the sufficient material. Hence, it requires interference of this Court.

12. The learned counsel for the respondent would vehemently contend that it is the case of the complainant that the earlier amount was adjusted and same is pleaded in the complaint itself. The fact that the earlier transaction was not disputed but claims that the documents at Ex.P1 and P6 are obtained at the time of advancing the loan amount in the year 2018 and the same was misused by the complainant and the First Appellate Court rightly appreciated the material on record and regarding part payment in terms of Ex.D3 is also taken note of by the Trial Court and there is no endorsement and the same has been discussed in the judgment of the First Appellate Court and First Appellate Court also held that witness to the document at Ex.P6 was not examined and First Appellate Court comes to the conclusion that the complainant was not having any financial

capacity to lend the money and rightly appreciated the material on record. Hence, it does not require any interference.

13. Having heard the learned counsel appearing for the respective parties and also on perusal of the material on record as well as the grounds urged in the appeals and the arguments of the learned counsel, the points that would arise for consideration of this Court are:

1. Whether the Trial Court committed an error in acquitting the accused in C.C.No.6061/2022 in the absence of any rebuttal evidence and whether it requires interference by this Court?
2. Whether the First Appellate Court committed an error in reversing the finding of the Trial Court passed in C.C.No.10763/2021 in the absence of any rebuttal evidence and whether it requires interference of this Court?
3. What order?

**Point No.1:**

14. The case of the complainant in C.C.No.6061/2022 before the Trial Court is that the complainant and the accused were known to each other and accused had approached him for hand loan in order to perform marriage of his son and also to clear the old debts and hence, he advanced the amount of Rs.9/- lakh by way of cash on 21.12.2021 and accused had agreed to repay the same within two months with 18% interest and accused though issued the Cheque, same was not honoured and hence, proceedings were initiated. The complainant also examined himself as PW1 and got marked the documents at Ex.P1 to P12 and accused also examined himself as DW1 and got marked the document at Ex.D1. It is not in dispute that Cheque at Ex.P1 was issued by the accused and it contains his signature. It is also not in dispute that bank had issued an endorsement in terms of Ex.P2 stating that accused was not having sufficient fund. Immediately, the complainant had issued the legal notice and notice was served on him but accused did not repay the amount. It is also important to note that the complainant placed on record Ex.P6 to P8 to show that he availed the loan from the



bank pledging his gold ornaments and ledger for jewel loan is marked as Ex.P9 and accused was given reply on 03.03.2022 in terms of Ex.P10 and the legal notice dated 23.02.2022 of the complainant is marked as Ex.P12. It has to be noted that when the complainant got marked the document at Ex.P1 and also Ex.P5, it is very clear that Cheque was issued by the accused in terms of Ex.P1 and not disputed the signature. In the legal notice, it is clearly mentioned that loan was advance for the purpose of marriage of the son of the accused and contents of complaint and legal notice are similar. Notice was also served in terms of Ex.P12 and there is an acknowledgment in this regard which is marked as Ex.P4.

15. It is also important to note that a separate receipt is issued in terms of Ex.P5 which also discloses having received the amount of Rs.9/- lakh and reason also stated that above hand loan was received for the purpose of clearing loan which was taken for the purpose of son's marriage and to clear personal old debt and signature at Ex.P5 is not disputed. The complainant also relied upon Ex.P6 to P8 for having availed the loan from the

concerned bank i.e., Repco Bank and totally more than Rs.9/- lakh and odd. No doubt, the accused has given reply in terms of Ex.P10 and he denied the transaction but his defence is that the complainant was running a chit business and his son is one of the member of the said chit business and at the time of bidding the chit ,the complainant insisted him to give a security and hence, he had issued a subject matter of Cheque and signed the blank paper.

16. Having considered the complaint averments and also notice and reply notice, this Court has to examine the evidence available on record. PW1 reiterates the contents of the complainant in the affidavit and also got marked the documents. In the cross-examination, he admits that he is not filing any Income Tax returns and also admits that Ex.P6-Receipt is also produced in C.C.No.10763/2021. But he categorically admits that for having lent the money, pledged his gold ornaments and advanced the loan amount and the said aspect is not stated in the complaint as well as in the notice. A suggestion was made that the son of the accused had subscribed to the Chit business

and the said suggestion was denied. However, a suggestion was made that Cheque was given as security and signature was obtained on the blank paper and the said suggestion was denied stating that he was not running any chit business. In the cross-examination, a question was put to him that the son of the accused was making the payment and he says that he was returning the amount which was lent from him. Another question was put to him that whether any document was produced for having lent the loan, he says that no document is produced since he had cleared the loan amount. He admits that Ex.P7 is dated 26.08.2022 and Ex.P8 is 27.05.2022 and he had withdrawn the amount and he cannot place any record to show that the said amount was with him till advancing the loan.

17. The accused got examined and he reiterated his defence in his chief evidence about issuance of Cheque at Ex.P1 and also the signature at Ex.P5. But in the cross-examination, he categorically admits that he had studied up to X standard and also admits that he performed his son's marriage on 16.05.2021. It is suggested that he had taken the advance of Rs.9/- lakh and

in this connection, issued the documents at Ex.P1 and P5 and the said suggestion was denied. But he claims that both the documents are given as security. He categorically admits that he is not having any document to show that the complainant was running a chit business but he claims that his son was subscribed to the said chit business and in this regard also no document is placed on record. A suggestion was made that he had taken false defence that the complainant was running a chit business and the said suggestion was denied. However, he admits his signature available at Ex.P1 and P5.

18. Having considered the evidence of PW1 and also the evidence of DW1, it discloses that PW1 relies upon the documents at Ex.P1 and P6 and the accused not disputes the very two documents, but claims that the signatures were taken on the blank paper as well as on the blank Cheque. It is important to note that when the plea was recorded, accused says that he has given the Cheque in connection with some other transaction as security. During the course of the cross-examination of DW1 and also his chief evidence, his specific

defence is that he gave the Cheque as a security since the complainant was running the chit business. The evidence of DW1 that though he took the specific defence that he categorically admits that for having running the chit, he is not having any documents but deposed that his son was transferring the amount to the account of the complainant and also he has not produced any document to that effect.

19. It is also important to note that accused categorically admits that he has not given any complaint for having taken the signature on the blank paper and Cheque and has not given any notice. Hence, it is very clear that at the time of recording plea, he says that he gave the Cheque in connection with some other transaction. But in the defence he comes up with the defence that Ex.P1 and P6 were given towards the chit transaction. But nothing on record to show that the complainant was running the chit. Though accused contend that his son was making payment also, not placed any document. It is also important to note that he gave the reply in terms of Ex.P10 wherein also he categorically says that he was running a chit and his son was

one of the chit members and in order to prove the same also, no document is placed on record. This Court also during the course of the arguments, given an opportunity to the counsel for the respondent/accused to place on record the document showing that the complainant was running the chit business but the counsel made the submission that no such documents are available with the accused.

20. It has to be noted that when the complainant placed on record Ex.P1 and P6, presumption lies in favour of the complainant and accused has to rebut the same but no such rebuttal evidence before the Court except taking of such a defence. It has to be noted that the Trial Court while acquitting the accused, the reasons are assigned that Ex.P6 is marked in both the cases. No doubt, Ex.P6 is marked in both the cases but on the other hand, other two documents of Ex.P7 and P8 are also placed to show that the complainant had pledged the gold ornaments and in respect of those two documents, nothing is discussed by the Trial Court but the Trial Court having considered the document of Ex.P6 comes to the conclusion that

when the complainant produced the same in other case also it creates the doubt and also he has not utilized the said amount to pay the money to the accused and the said observation is erroneous. But the fact is that he had pledged the gold ornaments and placed on record Ex.P6 to P8 in this regard is also not in dispute and mere an error in placing the receipt in both the cases, the Court cannot comes to such a conclusion that he is not having any capacity. Ex.P9 is the statement showing the transfer of said amount to the complainant. The Trial Court not discussed with regard to Ex.P7 to P9 and material discloses that the Cheque was issued and apart from that Ex.P6 contains the signature of the accused and the very conclusion of the Trial Court that he was not having the capacity to lend the money is erroneous and doubted that excess amount would be Rs.4,62,000/- having advanced the amount of Rs.5,50,000/- to other accused in C.C.No.10763/2022 and also in the present case the amount of Rs.9/- lakh. The mere suggestion is not enough and answer has to be elicited from the mouth of the witnesses. Unless rebuttal evidence is placed on record, mere confronting the document at Ex.D1 that son of accused

transferred the amount of Rs.12,000/- on different dates cannot be a ground to disbelieve the case of the complainant and the complainant is also given the explanation that the son of the accused also availed the loan from him and he had cleared his loan amount and hence, he did not place any document before the Court. When such explanation is given, merely relying upon the document at Ex.D1 unless a cogent evidence is placed on record rising any probable evidence, the Trial Court ought not to have comes to a such conclusion that the complainant not proved the case. The very finding of the Trial Court is erroneous and there cannot be any finding on presumption and assumption when documents of Ex.P6 to P9 were placed on record and apart from that Ex.P1 and P5 are placed on record and what made him to execute the Cheque as well as receipt, nothing is explained in the defence evidence. Hence, it requires interference of this Court. Accordingly, I answer the above point as affirmative.

**Point No.2:**

21. In C.C.No.10763/2021, the case of the complainant was accepted by the Trial Court in coming to the conclusion that



the material placed on record discloses the issuance of Cheque and also the receipt and accepted the case of the complainant that amount was advanced. It is the case of the complainant that earlier an amount was advanced in 2018 and after clearing the said amount again he borrowed the amount and issued the subject matter of the Cheque and also receipt. The First Appellate Court reversed the finding of the Trial Court in coming to the conclusion that the specific defence of the accused that in the year 2018, he had borrowed an amount of Rs.5/- lakh from the complainant and it was transferred to his account through RTGS. It is not in dispute that the amount was transferred through RTGS in the year 2018. It is also the contention that he had repaid the amount through RTGS to the extent of Rs.3,50,000/- and also accused placed on record Ex.D3 to D8 statement and passbook. In the cross-examination of DW1, Ex.P9 was confronted having advanced the amount of Rs.5,00,000/-.

22. It is discussed that accused disputed the financial capacity to advance the amount. It is also the case of the

complainant that he had taken the loan from pledging the gold ornaments and paid the amount. It is also emerged in the evidence that other case filed against one Sathyavijay is also admitted. The complainant also relied upon the document of Ex.P6 – receipt allegedly executed by the accused in confirmation of transaction apart from the Cheque and the signature therein is also admitted by accused but he denied the contents. The First Appellate Court also taken note of the fact that contents belongs to PW1 since there is admission. Having considered said admission only, comes to the conclusion that it would probable the defence of the accused that blank Cheque and signature on blank paper was taken. The complainant has not chosen to examine the witness to Ex.P6 i.e., Lohith. It has to be noted that a suggestion was made to PW1 that said Lohith is the maternal aunt's sons of the accused but accused did not deny the same but only he says that he is not aware of the same. The case of the complainant that Lohith is the common friend of the complainant and the accused. It has to be noted that said witness could be summoned through the Court by the complainant and when the accused took the defence that he had

signed on the blank paper, accused ought to have been examined the said Lohith who is non other than his relative.

23. It is the specific case that signature was taken on blank paper and same ought to have been proved by the accused and not the complainant. When the accused admits the documents at Ex.P1 to P6, he has to rebut the evidence before the Trial Court. Instead of rebutting the same, he kept quiet and not examined the said Lohith. Thus, the Trial Court committed an error in making an observation that the complainant ought to have been examined the witness to the document at Ex.P6 and the accused did not dispute the document of Ex.P6 but only his contention is that a signature was taken in the blank paper. Such being the case, his relative Lohith ought to have been summoned and proved by the accused that his signature was taken on blank paper but the same was not done. Apart from that the Trial Court also given the reason that there was a repayment of amount of Rs.5,500/- on 21.06.2021 and the same was transferred through NEFT to the complainant and no dispute that the said amount was made. But it is the case of the

complainant that accused borrowed the amount on 07.06.2021 but this payment was made on 26.06.2021 and the same was not towards the part payment. But the Trial Court erroneously comes to the conclusion that the same was a part payment. But it is the specific case of the complainant that amount was borrowed agreeing to repay the same with 18% interest per annum and also agreed to repay the same within 3½ months. If any substantial statement is made, then, there would have been reasoning of the Trial Court would have been accepted that same was a part payment. Having considered the payment of Rs.5,500/-, First Appellate Court comes to the conclusion that there was no any endorsement and also comes to the conclusion that he was not having the financial capacity but the fact is that the accused borrowed the loan in the year 2018 it not in dispute. According to him, he made the payment of Rs.3,50,000/- but not made the payment in entirety. But he contends that the documents which have been given earlier was misused and the material is very clear that even in terms of the admission on the part of the accused that he did not repay the entire amount. No doubt in 313 statement, he has stated that he made the

payment of Rs.3,50,000/-. But on perusal of the document at Ex.P6 is clear that he had taken the amount of Rs.5,50,000/- and also DW1 categorically admits in the cross-examination that he only mentioned the address in the receipt. Once, he mentioned the address in the receipt and also the signature found as a witness Lohith and his name and address is mentioned in the document also in the very same hand writing and ought to have been explained the same by the accused by examining the said witness Lohith but no reply was given when the notice was given to him.

24. It is also important to note that when he was cross-examination, he categorically admits that if any notice is given to him to the address which is mentioned in the notice in Ex.P5, same is correct and it is not the case that address mentioned in Ex.P5 is not belongs to his address. He categorically admits his signature at Ex.P6 as well as in the Cheque. When suggestion was made that his relative had signed in Ex.P6 as a witness, he has not denied the same and also admitted in the cross-examination that signature in Ex.D1 also belongs to him. It is

also important to note that in the cross-examination, he categorically admits that if writings mentioned in Ex.P1 and P5 are not that of, he can send the document to the hand writing expert and get the report and there was no any difficulty. When all these admissions are elicited from the mouth of DW1 and when there is no rebuttal evidence on the part of the accused and when the presumption lies in favour of the complainant that he had proved the document that Ex.P1 and P6, burden lies on the accused to rebut the same but no such rebuttal evidence when there is clear admission on the part of DW1 in the cross-examination that signature available at Ex.P1 and P6 belongs to him and nothing is rebutted. But the First Appellate Court committed an error in re-appreciating the material on record and reversing the judgment of the Trial Court and the same is not in a proper perspective and carried away only in respect of the payment of amount of Rs.5,500/- that too subsequent to the availment of loan amount that was availed on 07.06.2021 and payment was made on 26.06.2021 and the very approach of the First Appellate Court is erroneous and it requires interference of this Court. Accordingly, this point is answered as affirmative.

**Point No.3:**

25. In view of the discussions made above, I pass the following:

**ORDER**

- i) The Criminal Appeal No.5/2024 is allowed.
- ii) The impugned judgment of acquittal dated 08.12.2023 passed in C.C.No.6061/2022 by the XII ASCJ and ACMM Court, Bengaluru is set-aside. Consequently, the respondent is directed to pay the compensation amount of Rs.9,10,000/- and out of that Rs.9,00,000/- is payable to the appellant and remaining Rs.10,000/- shall vest with the State.
- iii) If the respondent fails to make payment within a period of two months, he shall undergo simple imprisonment for a period of six months.
- iv) The Criminal Appeal No.455/2024 is allowed.

- v) The impugned judgment of acquittal dated 22.01.2024 passed in CrI.A.No.1350/2022 by the LXVI Additional City Civil and Sessions Judge, Bengaluru is set-aside and the judgment dated 30.09.2022 passed in C.C.No.10763/2021 by the XII Additional and ACMM Court, Bengaluru is confirmed and restored.

Sd/-  
**(H.P. SANDESH)**  
**JUDGE**

SN